(4)

No. 89-1808

In The

Supreme Court Of The United States

OCTOBER TERM, 1990

JAMES WILSON,
Petitioner

v.

SECURITY INSURANCE CO.,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT
(Docket 13618)

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the Connecticut Supreme Court deprive the petitioner of due process by concluding as a matter of law that stacking of uninsured motorist coverage on multiple vehicles under the fleet policy in question was not an objectively reasonable expectation of the parties to the contract?

2. Did the Connecticut Supreme Court deprive the petitioner of due process by denying the petitioner's claim that the Application to Vacate the Arbitration Award did not give the petitioner sufficient notice of the issues involved?

PARTIES TO THE PROCEEDING

Petitioner:	James Wilson
Respondent:	Security Insurance Company
Parent Company:	Orion Group
Subsidiaries:	Fire and Casualty Insurance Company of Connecticut
	Texas Lloyds
	Connecticut Indemnity
	Security Reinsurance
	Connecticut Specialty Insurance Group

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1. Decision on Motion to Dismiss, App. 2A.

STATUTE INVOLVED

Conn. Gen. Stat. § 52-418, App. 4A.

CONCISE STATEMENT OF THE CASE

In its August 18, 1988 application to the Connecticut Superior Court to vacate the uninsured motorists' arbitration award, Security Insurance Co. stated that it "moves the Court to vacate the majority award for the reason that said award was based on an erroneous interpretation of Connecticut law and therefore exceeded the arbitrators' powers." (Petitioner's App. 38). On September 12, 1988 Security filed an amendment to its application enumerating two specific claims of legal error: the majority of the panel of arbitrators erred as a matter of law in interpreting the insurance policy in question and concluding (a) that Wilson was a named insured under the policy; and (b) that Wilson was entitled to stack coverage of six vehicles insured under the fleet policy to obtain a maximum limit of $240,000.00. (App. 1A).

In denying Wilson's Motion to Dismiss the Application to Vacate on September 15, 1988, the trial court found that the original application "sufficiently sets forth the grounds relied on," and as amended "sufficiently gives the respondent [Wilson] notice of the issues relied on." (App. 2A-3A).

The two issues raised by Security in its amended application to vacate are the precise issues it raised before the Connecticut Supreme Court. (Petitioner's App. 4). The Connecticut Supreme Court held that as a matter of law, the stacking of uninsured motorist coverage for multiple vehicles

insured under a fleet automobile liability policy is not permitted. (Petitioner's App. 4). As a result, Wilson will not receive any payment under the policy. Uninsured motorist coverage under this policy was $40,000 per vehicle. (Petitioner's App. 2). Therefore, the total amount of coverage available to Wilson was $40,000. However, $74,033.39 in workers' compensation benefits had been paid to Wilson. (Petitioner's App. 3). Under the policy, that amount was set-off against any coverage payable. Wilson challenged the availability of a workers' compensation setoff in a cross appeal but lost on that issue. (Petitioner's App. 8). Because of its resolution of the fleet stacking issue, the Connecticut Supreme Court declined to reach Security's first issue. (Petitioner's App. 4).

The Connecticut Supreme Court did pass on the federal questions raised by the petitioner when it found no error on Wilson's cross appeals.

SUMMARY OF THE ARGUMENT

The Connecticut Supreme Court had an adequate record before it to decide the legal issues presented on appeal. That Court made no findings of fact, but determined as a matter of law that the fleet automobile liability policy in question did not permit the aggregation or stacking of uninsured motorist coverage on each of the thirty-one vehicles insured under the policy.

Wilson received actual notice of the issues raised in Security's Application to Vacate the Arbitration Award. As a result, he was not denied due process in the state court proceedings.

In any event, the issues presented do not merit this Court's discretionary review.

ARGUMENT

1. Record for Review

Wilson's argument appears to be comprised of two claims. The first is that the Connecticut Supreme Court had an insufficient factual record before it to decide the fleet stacking issue and that the Court therefore made its own findings of fact.[1] Wilson is wrong on both points.

To decide whether fleet stacking was permissible the Court had to construe the policy under which Wilson made a claim. There is no dispute that the entire policy was part of the record before the trial court and the Connecticut Supreme Court. Wilson's complaint that the Court lacked evidence of the subjective expectation of the parties ignores the Court's holding that " '[t]he notion of 'stacking' as an objectively reasonable expectation of the parties [did] not . . . extend to fleet insurance contracts.' *Cohn v. Aetna Ins. Co.*, [213 Conn. 525, 530, 569 A.2d 541 (1990)]." (Petitioner's App. 4). The parties' subjective intent is irrelevant under the objective standard used by the Connecticut Supreme Court.

The reviewing Court made no findings of fact. Rather, the Court reviewed the terms of the policy, noting that stacking would mean that the Town of Woodbridge had purchased $38,440,000 worth of uninsured motorist coverage for a premium of $137. (Petitioner's App. 5). The Court concluded that as a matter of law such an expectation is not reasonable under the terms of the policy. (Petitioner's App. 5).

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[1] Wilson misstates the standard of review in uninsured motorist cases. In *American Universal Ins. Co. v. DelGreco*, 205 Conn. 178, 184-91, 550 A.2d 171 (1987), the Connecticut Supreme Court held that de novo review of the interpretation and application of the law by the arbitrators is required. That Court has not yet decided what review, if any, is required by any factual findings made by the arbitrators.

That Wilson disagrees with the Court's conclusion cannot transform his claims into a due process violation. Wilson's right to due process cannot have been violated on the basis that evidence irrelevant to the Court's ultimate conclusion was not presented to the Court.

2. Notice of Claims

Wilson's second claim is that he was denied due process in that Security's Application to Vacate did not give him adequate notice of the issues involved.

Wilson makes no claim that the trial court lacked jurisdiction to hear an application to vacate an arbitration award, nor could he. C.G.S. § 52-418 explicitly authorizes the Superior Court to determine such a matter. That section also sets forth the grounds for vacating an award, one of which is that the arbitrators have exceeded their powers. (App. 4A). Security asserted this ground as the basis for its application to vacate and further specified that the arbitrators exceeded their powers by basing the award on an erroneous interpretation of Connecticut law. Section 52-418, however, does not mandate the use of any particular form in filing an application to vacate. There are no fact pleading requirements as Wilson suggests. See *Killingly v. Wells*, 18 Conn. App. 508, 512, 558 A.2d 1039 (1989). Here, the majority's award, the third arbitrator's dissent and the insurance policy were included in the application. (App. 1A-2A). Security also requested a remand with direction to enter an order in conformity with the dissenting award. (App. 2A).

On September 12, 1988 Security filed an amendment to its application enumerating two specific claims of legal error. (App. 1A). The hearing on the application was scheduled for September 19, 1988. (App. 5A). Wilson makes no claim that he lacked actual notice of the issues or that he was prejudiced by an inability to prepare in time.

On September 15, 1988, the trial court denied Wilson's Motion to Dismiss on the basis that the Application gave Wilson sufficient notice of the issues relied on. (App. 3A). The Connecticut Supreme Court found no error on this issue. This decision is supported by the record.

3. Lack of Significance of Issues

Rule 10 states that a petition should be granted only for "special and important reasons." Three such reasons would be if the Connecticut Supreme Court's decision on a federal question conflicted with a decision of another state's highest court or a federal court of appeals, or if the Connecticut Supreme Court had decided an important unsettled issue of federal law, or if it had decided an important issue of federal law in conflict with decisions of this Court. Rule 10(b),(c).

In Wilson's 27-page petition, there is no citation of any case from another state or from a federal court of appeals. Indeed, it is not until page 24 that a case from this Court, *New Orleans v. Dukes*, 427 U.S. 297 (1976), is cited, and that citation is for the unremarkable proposition that a court does not sit as a super legislature. On page 25, *In Re Gault*, 387 U.S. 1 (1967), and *Armstrong v. Manzo*, 380 U.S. 545 (1965), are cited for the unremarkable proposition that due process "requires notice sufficient to permit preparation." That is all. There is no conflict among the courts, and there is no important federal issue, unsettled or otherwise.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION

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CV 88 274461	:	SUPERIOR COURT
SECURITY INSURANCE GROUP	:	JUDICIAL DISTRICT OF NEW HAVEN
VS.		AT NEW HAVEN
JAMES WILSON	:	SEPTEMBER 12, 1988

AMENDED APPLICATION TO VACATE ARBITRATION AWARD

The Plaintiff hereby amends its Application to Vacate Arbitration Award dated August 18, 1988 by adding the following paragraphs:

5. The majority erred as a matter of law in interpreting the policy identified as Exhibit A attached to the Plaintiff's original Application dated 8/18/88 and concluding that:

(a) the Defendant was a named insured under the policy; and

(b) the Defendant was entitled to stack coverage of six vehicles insured under this fleet policy to obtain a maximum limit of $240,000.

PLAINTIFF, SECURITY INSURANCE GROUP

By /s/ Susan M. Cormier

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CV88 274461	)	SUPERIOR COURT
SECURITY INSURANCE GROUP	)	JUDICIAL DISTRICT
	)	OF NEW HAVEN
V.	)	AT NEW HAVEN
JAMES WILSON	)	SEPTEMBER 13, 1988

MEMORANDUM OF DECISION ON MOTION TO DISMISS APPLICATION TO VACATE ARBITRATION AWARD AND REQUEST FOR ADMISSIONS

The respondent, James Wilson, has moved to dismiss an Application to Vacate Arbitration Award filed by the applicant, Security Insurance Group ("Security"). The stated ground for the motion is that the application is insufficient to put the respondent on notice as to the claims raised against the validity of the arbitration award.

The application to vacate recites that the parties submitted to arbitration a dispute regarding the uninsured motorist coverage of a policy issued to the defendant's employer. It further recites that two of the three arbitrators issued a written award, which is attached as an exhibit to the complaint. At paragraph 4 of the application, Security alleges that "the award was based on an erroneous interpretation of Connecticut law and therefore exceeded the arbitrators' powers." Paragraph 4 does not identify what the "erroneous interpretation" is nor what "Connecticut law" is relied on; however, the prayer for relief requests a remand "with direction to enter an order in conformity with the dissenting award."

The dissenting opinion in the arbitration in fact sets forth claims that the majority analysis does not conform to applicable law. Read as a whole, then, the application to vacate sufficiently sets forth the grounds relied on, in part by incorporation of other documents.

In addition, by an amendment filed on September 12, 1988, the applicant clarified its claim by enumerating the two specific claims of legal error relied on. The application sufficiently gives the respondent notice of the issues relied on. See *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178, 183 (1987).

The motion to dismiss is denied.

On August 29, 1988, the respondent filed Requests to Admit, however he has acknowledged that such discovery devices are applicable to "civil actions" and that the present proceeding is not considered a "civil action." See *Waterbury v. Waterbury Police Union*, 176 Conn. 401, 407 (1979). At any rate, the application is due to be heard on September 19, 1988, well before the time allowed for responding to requests for admissions. While the court will welcome any stipulations by which the parties may simplify the presentation of the issues, it will not delay the hearing to allow resort to a procedural device probably not applicable to such proceedings.

/s/ Hodgson J

Beverly J. Hodgson, Judge

FILED SEP 15 1988

Sec. 52-418. Vacating award. (a) Upon the application of any party to an arbitration, the superior court for the judicial district in which one of the parties resides or, in a controversy concerning land, for the judicial district in which the land is situated or, when the court is not in session, any judge thereof, shall make an order vacating the award if it finds any of the following defects: (1) If the award has been procured by corruption, fraud or undue means; (2) if there has been evident partiality or corruption on the part of any arbitrator; (3) if the arbitrators have been guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy or of any other action by which the rights of any party have been prejudiced; or (4) if the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter was not made.

(b) If an award is vacated and the time within which the award is required to be rendered has not expired, the court or judge may direct a rehearing by the arbitrators.

(c) Any party filing an application pursuant to subsection (a) of this section concerning an arbitration award issued by the state board of mediation and arbitration shall notify said board and the attorney general, in writing, of such filing within five days of the date of filing.

SUMMONS

To the Sheriff of the County of New Haven, his deputy, or a constable of the Town of New Haven, within said County, Greeting:

By Authority of the State of Connecticut, you are hereby commanded to summon James Wilson to appear before the Superior Court within and for the Judicial District of New Haven, 235 Church Street, New Haven, Connecticut on September 19, 1988 at 10:00 A.M., in Room 4D then and there to show cause, if any there be, why the foregoing Application should not be granted by serving within the manner prescribed by law a true and attested copy of the foregoing Application at least six days before the date of said hearing.

Hereof fail not, but due service and return make according to law.

Dated at New Haven, Connecticut this 18th day of August, 1988.

/s/ Susan M. Cormier

Susan M. Cormier
Commissioner of the Superior Court